



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

September 10, 1998

### **S. 391**

### **Mississippi Sioux Tribes Judgment Fund Distribution Act of 1998**

*As ordered reported by the Senate Committee on Indian Affairs on July 29, 1998*

#### **SUMMARY**

S. 391 would direct the Secretary of the Interior to distribute previously appropriated funds, plus accrued interest, to certain tribal governing bodies and individuals as payment of a judgment in favor of the Mississippi Sioux tribes. Various legal challenges make it unlikely that the funds would be disbursed within the next several years under current law. If S. 391 is enacted and not challenged in court, this bill would result in payments being made in the near term that otherwise would be made at some point in the future. If S. 391 is enacted and challenged in court, the expected near-term payments would probably be delayed by one-to-several years. The bill also requires the establishment of trust funds for the tribal distributions and prescribes purposes for which those funds could be spent. Finally, S. 391 would increase the requirements for establishing lineal descent. However, CBO estimates that the additional costs of the Bureau of Indian Affairs (BIA) for reviewing claims of lineal descent would be less than \$500,000 in any year, and would be subject to appropriation.

CBO estimates that enacting S. 391 would affect direct spending over the 1999-2008 period, but would probably result in no net cost to the federal government over that period. We estimate that direct spending would increase by a total of about \$17 million in fiscal year 2000. This spending would be more than offset by savings of future payments that would otherwise be made in absence of S. 391, but we cannot estimate the precise amount or timing of such payments. Because S. 391 would affect direct spending, pay-as-you-go procedures would apply.

S. 391 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) that would affect tribal governments. CBO estimates that complying with this mandate would entail no net costs. Further, this bill would confer substantial benefits on tribal governments. S. 391 would impose no new private-sector mandates as defined in UMRA.

## ESTIMATED COST TO THE FEDERAL GOVERNMENT

For the purposes of this estimate, CBO assumes the bill will be enacted near the start of fiscal year 1999. CBO estimates that enacting S. 391 would have no significant impact on discretionary spending and no net cost in terms of direct spending over the 1999-2008 period. The near-term budgetary effects are shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

	By Fiscal Year, in Millions of Dollars				
	1999	2000	2001	2002	2003
<b>CHANGES IN DIRECT SPENDING</b>					
Estimated Budget Authority	0	17	a	a	a
Estimated Outlays	0	17	a	a	a
a. The legislation would trigger direct spending of about \$17 million in fiscal year 2000, but these costs would be offset by savings in subsequent years from payments that would otherwise be made in the absence of S. 391. CBO cannot predict the precise amount or timing of payments that would be required if S. 391 is not enacted.					

S. 391 would impose a one-year statute of limitations on legal actions to challenge the constitutionality of the bill. If there are no claims during the year, then the Secretary of the Interior would disburse the \$1.47 million that was appropriated in 1968 for the judgment in favor of the Sisseton and Wahpeton Tribe of Sioux Indians and the interest that has accrued on the initial appropriation. S. 391 would impose a more stringent requirement for proving tribal ancestry by lineal descent and would thereby increase the staff time necessary for BIA to review claims of lineal descent. However, CBO estimates that the additional costs associated with reviewing claims of lineal descent would be less than \$500,000 in any year from appropriated funds.

This bill would require that 28.4 percent of the settlement funds be distributed to the governing bodies of the Spirit Lake Sioux Tribe of North Dakota, the Sisseton and Wahpeton Sioux Tribe of South Dakota, and the Assiniboine and Sioux Tribes of the Fort Peck Reservation in Montana, one year after enactment of this bill. Up to 71.6 percent of the settlement funds would be distributed to the lineal descendants of the Sisseton and Wahpeton Tribe of Sioux Indians. Under S. 391, CBO expects that the Secretary would disburse the total of about \$17 million in fiscal year 2000. This estimate assumes that interest would continue to accrue until the final distribution.

The direct spending in 2000 would be offset by a reduction in outlays of at least the same amount at some point in the future. Based on information provided by BIA and the Department of Justice, CBO expects that the two court cases currently delaying the payments would not be resolved until sometime after fiscal year 1999. Though we have no basis for knowing when the court cases will be resolved, we expect that the resulting payments would equal the amount that would be paid under this legislation plus accrued interest.

## PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act specifies pay-as-you-go procedures for legislation affecting direct spending or receipts. CBO estimates that enacting S. 391 would increase direct spending by about \$17 million in fiscal year 2000, which would be more than offset by savings in subsequent years from payments that would otherwise be made in the absence of S. 391.

	By Fiscal Year, in Millions of Dollars										
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Changes in outlays	0	0	17	a	a	a	a	a	a	a	a
Changes in receipts				Not applicable							

a. The legislation would trigger direct spending of about \$17 million in fiscal year 2000, but these outlays would be offset by savings in subsequent years from payments that would otherwise be made in the absence of S. 391. CBO cannot predict the precise amount or timing of payments that would be required if S. 391 is not enacted.

## ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

S. 391 contains an intergovernmental mandate as defined in UMRA, but CBO estimates that complying with this mandate would entail no net costs. The bill would place requirements upon the affected tribes specifying how judgment funds must be used. Funds would be allocated to the tribes in special trust fund accounts. They could not be used to make per capita payments to tribal members, but rather would be used for tribal programs. Because these requirements are placed on funds awarded as a judgment, and not as a condition of federal assistance, they would be mandates as defined by UMRA. However, any costs would be more than offset by the funds provided by the bill.

The most significant impact of this bill on tribal governments would be the benefit conferred by the bill's proposed distribution of judgment funds. Under current law, the Mississippi

Sioux Tribes would receive no additional funds under these judgments. The funds due to the tribes under the distribution plan originally approved by the Congress have already been paid. The remaining funds were to be paid to lineal descendants of the Sisseton and Wahpeton Tribes. Under the earlier plan, these individuals were to have received about \$1.47 million. Those funds have not yet been paid because of ongoing litigation and, with accrued interest, currently amount to about \$15.2 million. This bill would establish a revised distribution plan under which the descendants would receive up to 71.6 percent of the funds and the tribes would receive the remainder.

The bill specifies that if its provisions are contested, the prevailing party will be entitled to 100 percent of the remaining funds. CBO cannot predict the likelihood or outcome of such a suit.

## **ESTIMATED IMPACT ON THE PRIVATE SECTOR**

S. 391 would impose no new private-sector mandates as defined in UMRA.

## **PREVIOUS CBO ESTIMATES**

On August 22, 1997, CBO transmitted an estimate of H.R. 976, the Mississippi Sioux Tribes Judgment Fund Distribution Act of 1997, as ordered reported by the House Committee on Resources on July 16, 1997. For H.R. 976, CBO assumed the bill would be enacted prior to October 1, 1997; therefore, CBO estimated that the accrued interest that would be disbursed under the bill would be less than the total under S. 391. In addition, H.R. 976 provided that the principal would be distributed to the lineal descendants of the Sisseton and Wahpeton Tribe of Sioux Indians and that, one year later, the interest would be distributed to the governing bodies of the Spirit Lake Sioux Tribe of North Dakota, the Sisseton and Wahpeton Sioux Tribe of South Dakota, and the Assiniboine and Sioux Tribes of the Fort Peck Reservation in Montana.

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